

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

THOMAS POWER,
Plaintiff,

v.

HEWLETT-PACKARD COMPANY,
Defendant.

Civil Division
Docket No. 2:17-CV-00154-MRH

Hon. Mark R. Hornak

**DEFENDANT HP, INC.’S MOTION TO STRIKE PLAINTIFF’S RESPONSE BRIEF TO
DEFENDANT’S MOTION FOR SUMMARY JUDGMENT AND RENEWED MOTION
IN LIMINE TO PRECLUDE THE TESTIMONY OF WILLIAM F. KITZES**

AND NOW, comes the Defendant, HP, Inc., improperly pled as Hewlett-Packard Company, by and through its undersigned counsel, and moves this Honorable Court as follows:

1. By way of Court Order entered on April 26, 2023, Defendant was granted leave to file a Memorandum supplementing its Motion for Summary Judgment and renewing its Motion *in Limine* to Preclude the Testimony from William F. Kitzes, J.D. as to the issue of the reliability of the methodology underlying Kitzes’ opinion regarding the availability of pop-up authentication warnings. *See* ECF No. 206.

2. Defendant filed its Supplemental Memorandum, which included the Affidavit of Wesley Dale on May 23, 2023. *See* ECF No. 207.

3. Pursuant to the Court’s April 26, 2023 Order, Plaintiff was required to file a notice on the Docket stating whether he will take the deposition of the affiant of any Affidavit submitted with Defendant’s Memorandum within 14 days of the date (May 23, 2023) of Defendant’s filing. *See* ECF No. 206.

4. Plaintiff has violated the Court Order by failing to file the required notice.

5. Further, and to the extent Plaintiff elected not to depose Mr. Dale, Plaintiff’s response to Defendant’s Renewed Motion for Summary Judgment and renewed Daubert Motion as to Kitzes “shall be filed no more than thirty (30) days than...after the filing of Defendant’s

Supplemental Memorandum,” which imposed a deadline of June 22, 2023. *See* ECF No. 206.

6. Plaintiff again violated the Court Order by failing to file a timely response to Defendant’s Renewed Motions.

7. As Plaintiff ignored the Court Order and failed to take any action whatsoever, lead counsel for Plaintiff was ordered by the Court to “personally” respond. *See* ECF No. 208.

8. Rather than personally respond, Plaintiff instead filed a Brief in Response to Defendant’s Renewed Motions on July 11, 2023. *See* ECF No. 211.

9. Plaintiff’s Response Brief (ECF No. 211) was filed three weeks subsequent to the appropriate filing deadline without explanation and/or leave of court to do so.

10. In addition to the inexplicable timing of Plaintiff’s filing, said filing violates multiple provisions of the Court’s April 26, 2023 and July 5, 2023 Orders as addressed above. *See* ECF No. 206 and ECF No. 208.

11. As a result, Defendant respectfully submits that Plaintiff’s Response Brief should be stricken from the record and Defendant’s Motion for Summary Judgment and Renewed Motion *in Limine* with regard to William F. Kitzes should be decided based upon the proper submissions previously filed with the Court.

12. To the extent the Court is inclined to deny the within Motion to Strike Plaintiff’s Response Brief, Defendant respectfully requests that this Honorable Court enter an Order allowing Defendant to file a Reply Brief in support of its Motions within seven (7) days of the date of any Order denying the within Motion as originally set forth in the Court’s April 26, 2023 Order. *See* ECF No. 206.

WHEREFORE, Defendant HP, Inc., improperly pled as Hewlett-Packard Company, respectfully requests that this Honorable Court grant its Motion and strike Plaintiff's Response Brief from the record with prejudice.

Respectfully submitted,

/s/ Michael A. Weiner

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Certificate of Service

I hereby certify that on July 14, 23, a true and accurate copy of the foregoing was served via the Court's Electronic Case Filing System to all counsel of record.

/s/ Michael A. Weiner
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